

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter	
of	
H.C. ENTERTAINMENT CORP.,	Case Nos.
Debtor,	01-B-13591
-and-	01-B-13592
LANSDOWN ENTERTAINMENT CORP.,	
Debtor.	

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July 10, 2001

United States Custom House
One Bowling Green
New York, New York 10004

Adj. From: 07/09/01 (1) Hearing Regarding Terms of
sale of assets; Adj. from: 07/09/01 (1); Hering
Regarding terms of Sale of Assets.

B E F O R E:

HON. ROBERT E. GERBER

Bankruptcy Judge.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2
3 A P P E A R A N C E S :

4
5 BACKENROTH, FRANKEL & KRINSKY, LLP

6 Attorneys for Debtor

7 One Dag Hammarskjold Plaza

8 885 Second Avenue

9 New York, New York 10017

10
11 BY: MARK A. FRANKEL, ESQ., of Counsel

12 -and-

13 BY: ABRAHAM BACKENROTH, ESQ., of Counsel

14
15
16
17 VICTOR & BERNSTEIN, P.C.

18 Attorneys for Flatiron

19 18 East 41st Street

20 New York, New York 10017

21
22 BY: SAUL L. VICTOR, ESQ., of Counsel

23
24
25

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2
3 A P P E A R A N C E S (Continued) :

4
5 SCHWARTZ, LICHTENBERG, LLP

6 Attorneys for Mansion Realty

7 The Bar Building

8 36 West 44th Street, Suite 1111

9 New York, New York 10036

10
11 BY: BARRY E. LICHTENBERG, ESQ.,

12 of Counsel

13
14
15
16 LeBOEUF, LAMB, GREENE & MacRAE, ESQS.

17 Attorneys for Waterfront NY, LP

18 125 West 55th Street

19 New York, New York 10019

20
21 BY: JOHN P. CAMPO, ESQ., of Counsel

22 -and-

23 BY: JAY SAFER, ESQ., of Counsel

24
25

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

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3 A P P E A R A N C E S (Continued) :

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5
6
7 STEVEN I. HONIG, ESQ.

8 General Counsel to Waterfront NY

9 Realty Corp.

10 224 12th Avenue

11 New York, New York 10001

12
13
14
15 DAVID J. KENNEDY, ESQ.

16 U.S. Department of Justice

17 U.S. Attorney's Office

18 Southern District of New York

19 Attorney for Internal Revenue

20 Service

21 100 Church Street, 19th Floor

22 New York, New York 10007

23

24

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1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

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3 A P P E A R A N C E S (Continued) :

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5
6 NEAL S. MANN, ESQ.

7 Assistant Attorney General

8 Office of the Attorney General

9 Attorney for New York State Liquor

10 Authority

11 120 Broadway

12 New York, New York 10271-0221

13
14
15
16 CAROLYN S. SCHWARTZ, ESQ.

17 Office of the United States Trustee

18 33 Whitehall Street

19 New York, New York 10004

20
21 BY: TRACY HOPE DAVIS, ESQ., of Counsel

22 -and-

23 BY: GREG ZIPES, ESQ., of Counsel

24

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1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 P R O C E E D I N G S

3 THE COURT: Okay, we have two
4 non-jointly administered but related cases,
5 H.C. Entertainment and Lansdown Entertainment,
6 which I confess to have referred to
7 colloquially as The Tunnel and Limelight.

8 Let me get appearances from
9 everybody.

10 MR. BACKENROTH: Yes, Abraham
11 Backenroth for the Debtor, for both Debtors.
12 Backenroth, Frankel & Krinsky.

13 THE COURT: Okay.

14 MR. LICHTENBERG: Barry
15 Lichtenberg of Schwartz, Lichtenberg for the
16 landlord on the landlord bankruptcy.

17 THE COURT: Lansdown landlord.

18 MR. VICTOR: Saul Victor of
19 Victor & Bernstein, P.C. for the <STOERP>
20 Flatiron, the prospective purchaser in
21 connection with the Lansdown matter, which is
22 also known as the Limelight.

23 THE COURT: Okay.

24 MR. FRANKEL: Mark Frankel,
25 Backenroth, Frankel & Krinsky for the Debtor.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 THE COURT: Okay, Mr. Frankel.

3 MR. CAMPO: John Campo, LeBoeuf,
4 Lamb, Greene & MacRae for the Waterfront, the
5 landlord of The Tunnel.

6 MR. HONIG: Steve Honig, general
7 counsel for Waterfront New York.

8 THE COURT: Your last name again?

9 MR. HONIG: Honig, H-o-n-i-g.

10 THE COURT: Okay, Mr. Honig.

11 MR. SAFER: Jay Safer, LeBoeuf.

12 THE COURT: You are with Mr.
13 Campo.

14 MS. DAVIS: Tracy Davis.

15 THE COURT: Okay, Ms. Davis.

16 MR. MANN: Neal Mann, New York
17 State Attorney General's Office on behalf of
18 the State Liquor Authority.

19 THE COURT: Okay.

20 MR. KENNEDY: And, finally --

21 THE COURT: I am sorry, Mr. Mann.
22 I know the SLA is interested in this matter,
23 but if the SLA is actually objecting on
24 anything, I am not aware of that.

25 MR. MANN: The SLA today is an

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 interested objector.

3 MR. KENNEDY: David Kennedy, U.S.
4 Attorney's Office for the IRS.

5 THE COURT: Okay, Mr. Kennedy.

6 All right, we have your sale
7 motion, Mr. Backenroth. And, we also have Mr.
8 Campo's desire to get his rent amending that.

9 To what extent, if any, have any
10 objections that were raised by the IRS, Mr.
11 Campo, or otherwise, been consensually
12 resolved?

13 MR. BACKENROTH: Well, Your
14 Honor, we have gone through the objections of
15 the U.S. Trustee's office.

16 I think we have dealt with the --
17 we have not had an opportunity to go over all
18 of this with Ms. Davis, but we have attempted
19 to deal with all of those objections. And, I
20 can go through all of those things.

21 There is a disclosure concerning
22 the purchaser. Neither of the purchasers have
23 anything to do with Mr. Gatin or Mrs. Gatin.

24 I think the other issue was the
25 issue concerning the sale.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 I think that we do lay out the
3 basis for a sale, an immediate sale, even
4 outside of a plan. The fact of the matter is,
5 is that this Debtor is difficult, has
6 difficulties operating. It has the threat of a
7 termination of it's liquor license by the SLA
8 hanging over its head. And, unless an
9 immediate sale is done, the value of the
10 premises and the business will be lost.

11 In fact, it will be lost very
12 quickly unless there is a very, very quick
13 sale.

14 The Debtor is not in the position
15 with regard to the Waterfront landlord to pay
16 the rent. I have been on the phone with Mr.
17 Gatin. Unfortunately, the premises are open
18 only on a very limited basis at this moment,
19 one time a week. And, it doesn't have the
20 monies to actively promote and do the things
21 that it has to do in order to increase its
22 revenue.

23 So, if they don't have a sale
24 rather quickly, then the value of the premises
25 will be lost. The sale price is \$2 million,

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 which we believe is substantially more than the
3 landlord's claim. There are counterclaims
4 against the landlord as well that were pending
5 in State Court.

6 And, the sale, we believe, is in
7 the best interest of all creditors. That is
8 the issue having to do with that, rather.

9 With regard to the Limelight
10 landlord, and I find these are also easier to
11 deal with than the names of the company --

12 THE COURT: Mr. Campo has The
13 Tunnel.

14 MR. BACKENROTH: Right, he has
15 The Tunnel, and the Limelight is Lansdown
16 Entertainment, which is the landlord in part of
17 the investment group that is purchasing the
18 Limelight and the leaseholdings. The terms of
19 that sale is they must work out their own
20 transaction with the landlord for a new lease,
21 but they are paying \$1 million 2, over and
22 above the amount of the leasehold obligations.

23 And, if it's subject to better
24 and higher offers, the prospective purchaser
25 has asked for a break-up fee and a topping fee,

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 \$50,000 in the event that somebody else is the
3 successful bidder. And \$100,000, that a bid
4 must be \$100,000 better than theirs to beat
5 their bid. Those are the two conditions that
6 they have requested.

7 There was also an issue raised in
8 the papers as to our ability to negotiate with
9 others. I would like to clarify that.

10 We have the right to negotiate
11 with anybody. All that meant was that up until
12 the point of this hearing, that we would not be
13 negotiating with other parties. I think even
14 that, to the extent that anybody has called and
15 inquired, we have given them the basic
16 information of what the transaction is.

17 There isn't an enormous amount of
18 interest, but those people who have expressed
19 some interest in the past, we will notify
20 concerning the sale.

21 If anybody wants to bid more than
22 what is being offered on the table, we have
23 also provided --

24 THE COURT: Let me interrupt you,
25 Mr. Backenroth, because although I reviewed the

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 papers, I didn't review them in the detail
3 necessary to answer every question.

4 Was the provision that was
5 complained of a no-shop provision or was it
6 stronger, was it like a gag provision, saying
7 that somebody expressed interest, you were
8 supposed to --

9 MR. BACKENROTH: No, it simply
10 says that we weren't going to discuss the terms
11 with others, and, in fact, we have.

12 THE COURT: It sounds like a gag
13 to me, but you are saying in any event, you
14 have.

15 MR. BACKENROTH: Yes, in other
16 words, although that was in there, to the
17 extent anybody has inquired, with other people
18 who have inquired, we have told them what the
19 terms are. So that, although it is in the
20 modification agreement of that one page, the
21 fact of the matter is, anybody who was willing
22 or expressed an interest, we took the call, and
23 we explained to them what the transaction is.

24 So, I don't think there has been
25 any prejudice to anybody concerning that. And,

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 the purchaser's counsel is here. He can
3 confirm that going forward, there is no
4 inhibition whatsoever against talking to
5 anybody or giving information or negotiating or
6 getting a better and higher offer.

7 THE COURT: And, Mr. Campo had
8 raised in his papers that he may just be aware
9 of the fact that this lease expires in two
10 years, and we have no intention of renewing it.
11 And, although his client can be forced to
12 swallow and assume and assign, consistent with
13 compliance with the Code, I am not aware of any
14 provision that says his client can be forced to
15 provide a new lease when the lease expires.

16 MR. BACKENROTH: Your Honor, we
17 are selling it as is, not subject to an
18 extension of the leasehold interests. They are
19 buying not only the leasehold interest, but the
20 principal of the Debtor is contributing the
21 name, both Limelight and Tunnel to the sale, so
22 there is added value that is being contributed
23 to the transaction.

24 THE COURT: The trademarks are
25 his property, of a public --

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 MR. BACKENROTH: Yes, a related
3 entity. And, therefore, that has value as
4 well. And, that is being added to the
5 transaction, not for altruistic reasons.
6 Obviously, the taxes that would be paid out of
7 the proceeds of these sales are personal
8 obligations of Mr. Gatin. So, it is to his
9 interest to get the highest amount of money and
10 to pay off the taxes in this transaction.

11 So, he is on the same page from a
12 personal as opposed -- as well as a corporate
13 point of view in getting the transaction done.

14 THE COURT: Mr. Backenroth, I
15 would like you to pause for a second because I
16 cared about this.

17 Mr. Kennedy, for the
18 government --

19 MR. KENNEDY: Yes, Your Honor.

20 THE COURT: -- would your
21 objections be resolved, if your tax liens
22 attached to the proceeds on this?

23 MR. KENNEDY: To the net proceeds
24 of the sale in the same order and priority as
25 they attached to the assets, yes, they would,

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 Your Honor.

3 THE COURT: You are not an
4 impediment to this? You will just get your
5 money from a different source?

6 MR. KENNEDY: Right, we just want
7 that language to be added to the Order. We
8 don't have a particular stake --

9 THE COURT: Are you cool with
10 that, Mr. Backenroth?

11 MR. BACKENROTH: Absolutely. In
12 fact, it would be the case, in any event,
13 because to protect his interests, we would you
14 have to have his rights attached to the
15 proceeds.

16 THE COURT: Okay, finish up with
17 your preliminary remarks, Mr. Backenroth. And,
18 then I want to hear from Ms. Davis on behalf of
19 the U.S. Trustee, Mr. Campo and anybody else
20 who is objecting.

21 MR. ZIPES: Your Honor, excuse
22 me, could I move a chair up next to Mr. Davis?
23 I was not expecting --

24 MS. DAVIS: I am sorry.

25 Could we take the one right

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 there, I am sorry? The problem is normally we
3 pinch hit for each other. Mr. Zipes came back,
4 and this is his case.

5 THE COURT: Would you like to be
6 excused, Ms. Davis?

7 MS. DAVIS: Not yet. Thank you.

8 THE COURT: Your call, I have
9 nothing against Mr. Zipes.

10 MS. DAVIS: Okay.

11 MR. ZIPES: Thank you, Your
12 Honor.

13 THE COURT: Okay, Mr. Zipes, will
14 you be the principal spokesperson for the U.S.
15 Trustee on this one?

16 MR. ZIPES: Okay.

17 THE COURT: Ms. Davis, hand it
18 over and give it to Mr. Zipes. You can sit, if
19 you want, Mr. Zipes, if it helps you to be
20 heard better. But, you can finish up, Mr.
21 Backenroth.

22 MR. BACKENROTH: Yes, Your Honor.
23 Just to summarize some of the points because
24 Mr. Zipes was not here when I made the comments
25 in response to the objections raised from the

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 U.S. Trustee's papers, number one, there will
3 be publications in the newspaper, although,
4 frankly, this property has been on the market
5 for sale and anybody interested -- and the
6 people in this industry are aware of that, but
7 we will publish, and we certainly would like to
8 have an interest in the bidding, if that is
9 something that could happen at the return date.
10 So, there is a modified provision to deal with
11 that particular objection.

12 There is disclosure concerning
13 the principals of both of the purchasers. None
14 of them have any relationship whatsoever to the
15 Gatins.

16 As disclosed in the moving
17 papers, with regard to Limelight, which is the
18 Lansdown petition, that there is a relationship
19 between the landlord and the purchaser. The
20 landlord will be part of that group, which,
21 frankly, assists us in the transaction
22 because --

23 THE COURT: It's a waiver of the
24 rent claim.

25 MR. BACKENROTH: Exactly, so it's

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 a million 2 over and above. And, they have to
3 deal with the leasehold situation. And,
4 although my moving papers say we estimate the
5 obligation between a million and a million 1, I
6 have been informed by the landlord that there
7 is an Order in State Court that has fixed the
8 rent at \$1 million 6, plus rent as it accrued.

9 THE COURT: This is a State Court
10 Order in contrast to a landlord contention?

11 MR. BACKENROTH: Yes, in other
12 words, what happened was there were eviction
13 proceedings in State Court. I say this by
14 hearsay because I do not have the actual
15 documents in front of me.

16 THE COURT: A nonpayment summary
17 proceeding that also gave rise to a money
18 judgment for the background.

19 MR. BACKENROTH: Right, by
20 stipulation in which they fixed the amount of
21 the debt at approximately \$1 million 6. The
22 rent runs approximately \$100,000 a month. So,
23 the landlord says that it is approximately 1.8
24 million that is owed on that transaction.

25 So, the value of the seal, if you

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 wanted to look at it that way is, 1.8 million
3 plus the million 2, over and above the million
4 8, with assumption that they will have to
5 satisfy or somehow resolve that particular
6 claim.

7 THE COURT: But not to guide
8 creditors, but your point is that if X comes
9 off the street, then the lease has to be
10 assumed and assigned, and you have to cure the
11 defaults?

12 MR. BACKENROTH: Absolutely. So,
13 somebody will have to come up with 1.8 million
14 as part of that transaction to at least match
15 the offer that is already on the table.

16 So, it's a \$3 million offer and
17 not the million 2, because it is in addition to
18 what has to be paid with regard to the lease.
19 So, we would normally have to do it.

20 With regard to the other
21 transaction, that transaction is \$2 million all
22 cash deal. The Wolf group has nothing to do
23 with the Gatins either. That is a cash and
24 carry. They would have to assume and assign
25 the lease --

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 THE COURT: Yes, how and when
3 would they satisfy the defaults owing to Mr.
4 Campo's clients?

5 MR. BACKENROTH: They would
6 satisfy those defaults at the closing.

7 THE COURT: Which is when?

8 MR. BACKENROTH: They would have
9 to get the SLA approval on the transfer of the
10 liquor license. And, we understand that Mr.
11 Wolf is an operator, does have a liquor
12 licenses, and that we believe that he should be
13 an approvable candidate for this, as the other
14 group is as well.

15 In other words, we only
16 negotiated with people that we believed were in
17 the industry and could get SLA approval without
18 difficulty and have gotten SLA approval.

19 THE COURT: Okay, you responded
20 to my question conceptually, but not in terms
21 that could help me better understand how much,
22 and you are asking me to tell Mr. Campo to have
23 his client cool his heels before he gets paid.

24 MR. BACKENROTH: I understand.
25 My estimate is that it's the time to get the

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 transaction approved depending on whenever Your
3 Honor gives us in terms of a sale time. Plus,
4 I think, as I understand, it is about five to
5 six weeks, the proper process concerning the
6 SLA approval. But, I am not one hundred
7 percent certain.

8 That is also information given to
9 me, not based on my own knowledge, because I am
10 not an SLA attorney, and I am not that familiar
11 with the way those things operate. But, that
12 is what has been told to me.

13 THE COURT: All right, I want to
14 give other parties in interest a chance to be
15 heard.

16 MR. MANN: Your Honor, may I
17 clarify, may I ask you something?

18 THE COURT: The SLA, Mr. Mann,
19 could you -- there are a lot of people who want
20 to hear what you have to say. Could you pull
21 up the mike?

22 MR. MANN: Oh, I am sorry.

23 As regarding the asset purchase
24 agreement with H.C. Entertainment, The Tunnel,
25 I believe the wording of that agreement is that

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 the closing would take place on a temporary
3 license, which is a lot quicker than the
4 permanent license that is being issued. So, it
5 would not be five or six weeks. It would be a
6 lot sooner because the temporary permanent can
7 be done in 30 days or less.

8 THE COURT: Okay.

9 MR. BACKENROTH: I would have to
10 defer to counsel. He knows this issue
11 certainly better than I do.

12 THE COURT: Sure, all right. Let
13 me hear from -- my understanding is that the
14 principal objections, vis-a-vis -- I don't
15 think there is any question on business
16 judgment, in terms of whether the sale was
17 appropriate or desirable for creditors,
18 although I think there is a real question as to
19 how much will be left after priority creditors
20 are taken care of.

21 But, Mr. Zipes, can I hear from
22 you as to the extent to which Mr. Backenroth
23 has responded to your concerns and the extent
24 to which concerns remain?

25 MR. ZIPES: Your Honor, I will

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 stand up. Do you want me to go over there?

3 THE COURT: That would be
4 desirable, if you could.

5 MR. ZIPES: Good afternoon, Your
6 Honor, Greg Zipes from the Office of the United
7 States Trustee.

8 I apologize for arriving late. I
9 was in Court in White Plains.

10 THE COURT: Knowing what the U.S.
11 Trustee's Office is juggling nowadays, no
12 apologies are necessary. Just go to it.

13 MR. ZIPES: Your Honor, I think
14 that you had asked whether all issues with
15 respect to business judgment had been
16 satisfied. And, I wanted to touch on that, and
17 also maybe get into some specifics regarding
18 the procedures Order aspect of there.

19 I have to warn you that the Order
20 was just presented to us, the procedures Order
21 was presented to us five minutes before the
22 hearing, and we have not had a chance to look
23 at it in depth.

24 Have no doubt, I have worked with
25 Mr. Backenroth in the past, and I have no doubt

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 that to the extent something is missing through
3 a misunderstanding, he would be happy to put
4 that in.

5 Leaving that aside, I have
6 questions about the efficacy of the sale. And
7 let me turn to H.C. Entertainment first, which
8 is, I guess, The Tunnel. I noticed H.C.
9 Entertainment.

10 The Debtor had filed a local rule
11 1007 statement. And in that statement, listed
12 at least preliminarily, this is under oath,
13 assets and liabilities.

14 These assets and liabilities show
15 that, as the Court noted, after the sale and
16 after the payment of liens and the landlord,
17 that there would be, basically, nothing left,
18 administrative expenses would have to be
19 included in that as well. There would be
20 basically nothing left for unsecured creditors.
21 And, that a plan would not be proposed.

22 I am not sure what the exit
23 strategy of this case would be. I am not sure
24 how appropriate the use of bankruptcy is just
25 to a sale that would lead to the payment of

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 creditors that is not incorporated into a plan.
3 That is one concern of the U.S. Trustee and
4 maybe the Debtor can tell us how this will lead
5 to a plan and how this might lead to
6 reorganization or liquidation of the Debtor.

7 Leaving that aside for the
8 moment, I wanted to turn to the -- and by the
9 way, with the other case, it's a similar
10 situation. If you look at assets and
11 liabilities of the other one, it's a similar
12 analysis in that the liens would either exceed
13 or come close to the sale price. I mean,
14 therefore, it is not clear what would be left
15 to fund a plan.

16 And, I don't think it's a
17 foregone conclusion that when Debtors come in
18 early in the case saying there should be a sale
19 of substantially all the Debtors' assets, that
20 everybody should just let it go and then worry
21 about how to get out of the case later on.

22 Other parties are obviously
23 frustrated. And, I guess they would like to
24 see it done as quickly as possible. But, I
25 think that is a question that needs to be out

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 there.

3 The sale procedure notice, the
4 notice of intended sale, which is attached to
5 the Order, the U.S. Trustee did raise some
6 specific concerns. And, I am told that, by Mr.
7 Backenroth, that our concerns may have been
8 addressed.

9 I, frankly, have not been able to
10 go through it closely enough. And, if it's
11 just a matter of tweaking it, then I am sure we
12 can work that out.

13 And, I am happy to hear that the
14 Debtor will cooperate fully in letting
15 potential purchasers and potential bidders see
16 what is in the companies.

17 One of the things that we were
18 concerned about is in one of these cases, there
19 was not a list attached to the contract of sale
20 of the assets that are being sold. I don't
21 know if that was an oversight or if that was
22 not an oversight. But, any bidder can see the
23 contract and see the assets listed, and it is
24 very specific, pages and pages of what is
25 located at that location. They can make an

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 analysis of what the bid should be in that
3 situation.

4 In the other one, I am not sure a
5 bidder coming in and seeing if they want to
6 purchase this property would have that ability.

7 And, so, I think as long as the
8 notice is clear that it doesn't necessarily
9 have to contain a full listing of what the
10 assets are, but it should list what, that any
11 potential bidder shall be permitted to see a
12 list of those assets, and shall be given
13 reasonable access to the premises to inspect
14 the assets, that should be right there in the
15 notice of sale. And, everybody signed a
16 hundred of these notices of sale and knows that
17 these sort of things should be in there.

18 I am assuming that that will not
19 be controversial with the Debtor to put in a
20 provision like that.

21 I have had -- from the objection,
22 I list a few other items that should be in --

23 THE COURT: Yes, as to one of
24 them, Mr. Zipes, by the way I should comment
25 because it was at my suggestion.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 I have a bid rigging case before
3 me. I was not enthusiastic about one bidder
4 having access to another bidder or bid
5 information from another bidder. And I was
6 interested in striking a fair balance between
7 maximizing value for the estate and minimizing
8 the risk of collusive bidding. And, my thought
9 was that parties in interest in the U.S.
10 Trustee would have access to that information.
11 But, it was at least, preliminarily, a concern
12 that communications between the prospective
13 bidders be minimized.

14 If you or any other party in
15 interest has views with respect to the best way
16 to strike that balance, I am open minded on the
17 issue.

18 MR. ZIPES: Unless the Debtor has
19 some special reason, you are referring to the
20 Affidavit being filed under seal?

21 THE COURT: The proof of service
22 for people who are interested in bidding.

23 MR. ZIPES: I, frankly, have not
24 seen that, myself, too often. There might be
25 reasons to keep a bidder secret or not known to

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 the other bidders.

3 THE COURT: Well, this wasn't
4 bidders. What this was was people who
5 expressed interest. And, I said that the
6 Debtor could submit a listing of those to whom
7 it had sent notice because they had expressed
8 interest under seal. So, that people who were,
9 what I would call dormant bidders would, in
10 essence, not have too easy an opportunity to
11 act collusively.

12 But, if you or any other party in
13 interest thinks it will maximize value with the
14 creditors to do away with that, I have an open
15 mind on the issue.

16 MR. ZIPES: Okay.

17 THE COURT: I will hear your
18 views, I will hear Mr. Backenroth's views and
19 anybody else's views.

20 MR. ZIPES: I think if there is a
21 special concern in this situation about
22 collusion, then, maybe we should consider
23 filing it under seal. But, I think the
24 assumption in the absence of that is that
25 everything should be open.

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2 But, that is not a major point of
3 mine. I am not saying that that is a major
4 issue here.

5 I think the notice, and, again, I
6 have not read it closely. I don't know if it
7 addresses that. The notice seems to make it
8 clear in the H.C. Entertainment, which I guess
9 is The Tunnel case, that what the purchaser
10 would actually be purchasing here -- because
11 the contract of sale, as written, states that
12 tax liens must be satisfied to the satisfaction
13 of the Debtor and Mr. Gatin -- I hope I am
14 pronouncing that word, his name right.

15 Potential bidders need to know
16 that that is a condition precedent of this sale
17 and this purchaser. And, they should have the
18 opportunity to bid in, because I think that is
19 a significant concession by the Debtor. And,
20 it could affect the sale price for other
21 bidders, if they knew that this was a condition
22 precedent to the sale going through.

23 Now, I have put in my papers,
24 that I think this condition precedent is
25 inappropriate. And, this condition precedent

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2 should not hold up the sale. And, Mr. Gatin's
3 tax problems with governmental authorities, to
4 the extent the sale is approved, should not be
5 a condition precedent to holding up the sale.
6 He should not be able to hold up the sale in
7 order to extract the deal from the Taxing
8 Authorities.

9 So, that is an aspect that should
10 be decided by this Court of whether this
11 provision should be struck or not from the
12 contract of sale.

13 THE COURT: One that requires tax
14 obligations. Are we talking about trust fund
15 taxes, or any kind of taxes or are all the
16 taxes, trust fund --

17 MR. ZIPES: I make a specific
18 reference to the agreement, Section 8.3. And,
19 I may have read this wrong, but it appears to
20 me in reading that section, seller and Peter
21 Gatin's tax obligations including the
22 pre-agreement shall have been satisfied on
23 terms satisfactory to the seller.

24 All governmental approval rights
25 for the consummation of this agreement shall be

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2 obtained.

3 This provision with respect to
4 Mr. Gatin gives us a way out that I don't think
5 is appropriate, but it should, in any event, be
6 part of the notice for other potential bidders
7 to know they also have the opportunity to the
8 extent that this provision is left in there, to
9 back out of the agreement, in essence, if
10 nothing is worked out for the Taxing
11 Authorities.

12 Because, see, the sale involves
13 the Debtors, substantially all of the Debtors'
14 assets. And, with liens to attach to the
15 proceeds of sale, except with respect to the
16 Taxing Authority liens, and, then, it also
17 provides --

18 THE COURT: Wait, I thought
19 Taxing Authority liens will attach to the
20 proceeds.

21 MR. ZIPES: Well, that is not
22 what the contract says initially, and if that
23 is the clarification that was made, I guess
24 that resolves my issue.

25 THE COURT: Mr. Backenroth, why

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2 don't you let Mr. Zipes speak his piece?

3 MR. BACKENROTH: I was going to
4 clarify.

5 THE COURT: I am going to hear
6 from you next because I suspect that some of
7 his concerns may have been resolved.

8 MR. ZIPES: Let me point out
9 where I am getting that from. The agreement in
10 Section 2, where it says, "The assets will be
11 sold, committed, transferred, and assigned to
12 the buyer on a closing date free and clear of
13 all liens, security interest, mortgages,
14 claims, restrictions, encumbrances, whatsoever,
15 except for the federal, state and city and tax
16 liens."

17 So, it is leaving that issue to
18 be resolved as a condition precedent, as far as
19 I read this.

20 THE COURT: I understand your
21 confusion, okay.

22 MR. ZIPES: Now, I should point
23 out that with the other Debtor, this part of
24 the agreement was not attached to my papers.
25 And, I don't know if the same language is in

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2 that one. And, perhaps, Mr. Backenroth can
3 confirm whether that is the case or not when he
4 speaks.

5 And, I don't think Mr. Backenroth
6 addressed the break-up fee and overbid amounts.
7 And, there is a standard that needs to be met
8 for the purchaser to get or a bidder to get no
9 break-up fee and an overbid in Integrated
10 Resources, which we cite. There has to be an
11 issue as to whether there is -- there are
12 several factors. And, basically, whether this
13 bidder will spur on any bidding.

14 I don't think any showing was
15 made as to whether this bidder is going to spur
16 competitive bidding and is entitled to a
17 \$50,000 break-up fee as a result of that. We
18 have no idea what its expenses are and whether
19 the fee hampers and/or rather incurs bidding.
20 So, Mr. Backenroth should be able to say
21 something about that.

22 The overbid, frankly, is not out
23 of bounds, for the sale price. So, Your Honor,
24 assuming that we can work on the sale procedure
25 Order with Mr. Backenroth, assuming that he is

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 not disagreeing with anything that I am saying,
3 and assuming that he can meet the business
4 judgment test, then, I think our objections
5 will be resolved at that point.

6 MS. DAVIS: I just wanted to add
7 something for Mr. Zipes that he didn't have the
8 opportunity to convey, and I was not able to
9 communicate.

10 THE COURT: Ms. Davis, just pull
11 that mike closer.

12 MS. DAVIS: I just wanted to add
13 something. I was not able to communicate with
14 Mr. Zipes. I am sorry for the confusion. We
15 normally don't have this in hearings before
16 Your Honor.

17 And, that is, it is my
18 understanding that the Debtor has not been able
19 to show proof of insurance or has not shown
20 proof of insurance yet. Typically, in a
21 Chapter 11 case, that is the type of
22 information we would obtain at a Section 341
23 meeting of creditors which, in fact, has been
24 scheduled and has not yet occurred.

25 We think that is very important

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2 here. We have a Debtor that is operating, not
3 on a daily basis, but occasionally, and as Your
4 Honor knows, there is quite a lot of traffic in
5 this club, but perhaps not enough, and that is
6 why they are in bankruptcy, but there is still
7 quite a lot of traffic in these clubs.

8 We think it is imperative that
9 there be some showing before the sale that the
10 Debtor has an interest, and they are meeting
11 certain of their obligations in the Chapter 11
12 before the Court makes certain dispositive
13 rulings on these motions.

14 THE COURT: Okay, does that take
15 care of what you needed to convey at this
16 point, Mr. Zipes?

17 MR. ZIPES: I think it does for
18 now.

19 THE COURT: Mr. Backenroth?

20 MR. BACKENROTH: Yes, first of
21 all, with regard to the Limelight, we didn't
22 have the list, at the time we filed the papers,
23 of the couches, chairs, tables. I understand
24 that such a list is available, and we will make
25 that available.

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2 As Your Honor knows, in a case of
3 this nature, furniture, chairs are not the real
4 estate that one sells. What one sells is the
5 leasehold interest, the name, the location,
6 that is the real guts of it.

7 But, certainly, it would be made
8 available for anybody to observe, to take a
9 head count. But, we have a list available, so
10 that issue is not an issue.

11 With regard to the provisions
12 concerning Mr. Gatin's necessity to be involved
13 in the determination of whether the tax liens
14 are paid or aren't paid, Your Honor has to
15 understand that the contract, itself, was
16 prepared initially not as part of or in a
17 bankruptcy context. It was prepared with the
18 assumption that one would close outside of the
19 bankruptcy context. And, one would have to
20 resolve tax liens when one sits down at a
21 closing. And, one would have to negotiate with
22 the Taxing Authorities in the event that there
23 is not enough money to resolve those claims.

24 Since the approach of the 11 is a
25 sale free and clear of all liens, encumbrances

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2 and claims, with the rights to attach to the
3 proceeds. And, we believe that the Taxing
4 Authorities will go along with the sale, even
5 if it doesn't one hundred percent cover the
6 claims, maybe it covers eighty percent or
7 ninety percent. It's certainly very close
8 because the claims are spill-over claims, the
9 same tax claims against both estates.

10 So, there is about a million and
11 a half owed to New York State, I believe.
12 About 500,000 owed to the IRS. And, if all
13 goes well and we need to sell it as I expect to
14 do, there is a million 2 on one portion of it,
15 and we believe that there is more than
16 \$800,000.

17 THE COURT: Are these 941
18 withholding and state --

19 MR. BACKENROTH: Yes, exactly.
20 They are the same obligation. In other words,
21 the obligation of Mr. Gatin and the obligation
22 of the corporate entities are one and the same.
23 So we are not talking about personal tax
24 obligations. We are talking about obligations
25 that were generated by the businesses.

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2 THE COURT: For which Mr. Gatin
3 is on the hook to the extent they are not
4 satisfied?

5 MR. BACKENROTH: Absolutely.
6 And, I want that satisfied. And, I think that
7 when you look at that clause in the context of
8 a non-bankruptcy sale, one could appreciate
9 that someone who wants to have those taxes
10 resolved wants to make sure he has some
11 control.

12 But, given the fact we have a
13 sale free and clear, I think that is really no
14 longer an issue.

15 We will sell it. Whatever is
16 there, available, assuming the Taxing
17 Authorities will not object to the sale because
18 it does not cover one hundred percent or ninety
19 percent, I think that is no longer an issue.

20 THE COURT: So, you're optimistic
21 or comfortable that the prototype contract can
22 be modified to moot out that issue.

23 MR. BACKENROTH: That is right.
24 It was a non-bankruptcy type of issue that was
25 created in the different contexts.

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2 Finally, with regard to the
3 insurance, I didn't inquire about the
4 insurance. It is the first time it has been
5 raised. I will call the client and find out if
6 he has insurance and provide him with a
7 certificate of insurance.

8 THE COURT: Why don't you make an
9 offer of proof, unless the U.S. Trustee wants
10 more than that, explaining to me and to parties
11 in interest and to the U.S. Trustee, the
12 Debtors' business judgment for wanting to sell
13 now, why it's selling and the manner in which
14 it is selling, and why it believes a break-up
15 fee is appropriate?

16 MR. ZIPES: Your Honor, I would
17 accept an offer of proof. But, I would want
18 cross-examination.

19 THE COURT: We will reserve your
20 rights in that regard.

21 MR. BACKENROTH: Let's deal with
22 the Limelight first. With regard to the
23 Limelight, there is a stipulation in State
24 Court that requires the sale --

25 THE COURT: Before you begin

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 again, Mr. Backenroth, if called upon to
3 testify, who would say what you're telling me?

4 MR. BACKENROTH: It would be Mr.
5 Gatin. I would have to call him down here, and
6 he would be the one to testify concerning these
7 things.

8 THE COURT: Okay.

9 MR. BACKENROTH: With regard to
10 the Limelight, let's deal with that first, as I
11 understand it, there is a stipulation in State
12 Court which not only fixes the amount of the
13 obligation of \$1 million 6, but requires that
14 the sale take place within 90 days, otherwise,
15 the leasehold interest would terminate.

16 Since what, the primary interest,
17 assets that you sell in this kind of a context
18 is the leasehold interest, the failure to sell
19 the property would mean, as a practical matter,
20 that one would lose the property.

21 THE COURT: How much time is left
22 of that ninety days, as we speak here?

23 MR. BACKENROTH: I would believe
24 to the beginning or the middle of August. I
25 don't have the exact date, but we could

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 schedule the sale and counsel for the landlord
3 is over here. So I can coordinate that date so
4 that we have --

5 THE COURT: Assume if the
6 landlord wins the bidding, he can wave his gun
7 to your head. And, I don't think there is a
8 real problem, but if a sale is not approved or
9 a sale is not teed up within a relatively short
10 period of time, it would be the landlord's
11 prerogative to at least argue that the
12 leasehold has terminated in accordance with the
13 terms of the lease as modified. And, that,
14 consequently, we may not have anything to sell
15 whatsoever.

16 And his negotiating position
17 would be a lot different under the context
18 where we can, over his objections if we had to,
19 imitate or go for a sale of the property and
20 assume and assign the lease, which would have
21 been an alternative for the same manner in
22 which there was instruction over here.

23 So, we have a short deadline.
24 The landlord has not been paid the rent that
25 it's owed. And, consequently, we are at a risk

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2 that a motion would be made by this landlord,
3 we are talking about the Limelight, to
4 terminate the lease for nonpayment of rent.
5 So, that issue is also outstanding.

6 The Debtors' operations,
7 themselves, are being kept at a minimum level,
8 merely to maintain the continuity of the
9 leasehold interest, and the continuity of the
10 liquor license, long enough so that we can sell
11 the premises. It is not making money. It is
12 barely covering expenses. And, it is not
13 generating enough money to pay the rent in
14 either one of the instances, not in the
15 Limelight and not in The Tunnel.

16 THE COURT: Am I correct that the
17 Limelight landlord isn't getting paid anymore
18 on his postpetition rent of Mr. Campo's --

19 MR. BACKENROTH: I don't know. I
20 cannot answer that.

21 THE COURT: I think Mr. Campo's
22 point is he is not getting anything.

23 MR. BACKENROTH: I understand,
24 but the operations may not be the same. One
25 may generate more money than the other. I

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2 don't have an answer to that.

3 In other words, I did call about
4 The Tunnel specifically because the issue was
5 raised by Mr. Campo as to what the availability
6 was with the funds, to make any payment on
7 behalf of that.

8 Right now they have approximately
9 \$20,000 in the bank account. They tell me that
10 is necessary for the purchasing of liquor and
11 for paying to operate. They are only open once
12 a week. And, they are generating approximately
13 20-some-odd thousand dollars on that day,
14 wherein, in the past, they generated like
15 \$200,000 a week. So, there is a very big
16 difference in its operations.

17 As I said, it is being maintained
18 solely for the purpose to get the sale done and
19 transfer the liquor license. And, it is an
20 entirely different procedure for the liquor
21 license, it was terminated, and they are
22 closed, as opposed to transferring an existing
23 liquor license. And, of course, there are all
24 kinds of problems with the SLA.

25 I mean, the petition was

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 triggered because there was a determination in
3 the SLA, in its internal administrative
4 procedures that -- not to continue the liquor
5 license. That was not served upon the Debtor,
6 and it was not effective until served. And,
7 that is one of the reasons why we filed the
8 petition.

9 The SLA has taken the position,
10 and, in fact, there is a motion pending, I
11 think it is returnable on the 18th, to have a
12 determination by this Court that as an
13 exception to the automatic stay provision, that
14 they could terminate the liquor license even
15 today.

16 So, we are at a risk that the
17 entire thing may go down the tubes if we don't
18 act quickly to do the sale. And, the SLA has
19 very little patience for this Debtor. They
20 have been in protracted litigation with them
21 over many, many years, in many, many Courts.
22 This is a very highly, publicity charged type
23 of case.

24 Just a few days ago, Mr. Gatin
25 was on the front page of the New York Post.

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2 And, I think he continues to be on the front
3 page of the New York Post on many occasions.
4 And, it is something that has to be brought to
5 a conclusion quickly, otherwise, there will be
6 nothing to sell.

7 Finally, as I said, the
8 operations are minimal at this moment. They
9 are being held together solely to effectuate
10 the sale. Any one of these things could
11 terminate the ability to sell, could terminate
12 the ability to realize substantial funds out of
13 these assets.

14 THE COURT: Now, I can appreciate
15 the comment that there may or may not be funds
16 for general creditors, but I didn't set the
17 priorities of the Bankruptcy Code. I didn't
18 set the laws to honor the rights of lien
19 creditors. The Taxing Authorities are both
20 lien creditors.

21 To honor the rights of landlords
22 who are entitled to be paid as a part of the
23 assumption and assignment and lease, we can
24 only do what we can do with the assets that we
25 have. And, we have a responsibility to save

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 what we can save under the circumstances. And
3 we, because we have so many things closing on
4 the Debtor and because of the limited funds
5 that are available to the Debtor, I would ask
6 that the Court determine that at least in the
7 business judgment of the Debtor, if it would be
8 appropriate to sell and that that satisfies the
9 Lionel standard and the Pure Pet Oil(sic.)
10 standard. We are talking about a wasting oil
11 asset, an asset that will become a value, a
12 zero value, unless there is an immediate sale.

13 I don't believe that, on the
14 other hand, if we have an immediate sale, and
15 we now make arrangements for the transfer of
16 the liquor license where there is a new
17 operator in place, that we will have the
18 cooperation of the SLA in moving that out
19 because I believe that their objective has been
20 to move Mr. Gatin out. And, with Mr. Gatin out
21 of the picture, I think that they would have no
22 objections to a sale because, in fact, they are
23 the primary beneficiary of the sale.

24 So, there are a lot of good
25 reasons to have the sale quickly. And a lot of

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 good business reasons that if we don't have the
3 sale quickly, we won't have a sale at all, any
4 assets at all.

5 So, I think the Debtor has
6 exercised its proper business judgment in
7 determining that this Court should move very
8 quickly and schedule a very quick sale with
9 regard to this property.

10 THE COURT: I gathered you flowed
11 from a discussion that was applicable to the
12 Limelight along to a discussion that was
13 applicable to both Debtors.

14 MR. BACKENROTH: That is correct.

15 THE COURT: Is there anything
16 with respect to The Tunnel, uniquely applicable
17 to The Tunnel, that is appropriate for
18 comments --

19 MR. BACKENROTH: There are
20 substantial claims of the landlord as there are
21 in the other situation. And, we have not paid
22 postpetition rent, which means we are in
23 jeopardy of having the leasehold interest
24 terminated and the lifting of the stay.

25 So, unless we have an immediate

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 sale, we may not have any Affidavit whatsoever.

3 As I said to the Court, by
4 Limelight and it means the same thing for the
5 Tunnel, it didn't generate sufficient funds to
6 pay the leasehold operations and, therefore, we
7 are in jeopardy of losing everything based upon
8 that as well.

9 THE COURT: Okay, now, talk about
10 the break-up fee and the business judgment,
11 believing that one is appropriate --

12 MR. BACKENROTH: Yes, I think
13 that --

14 THE COURT: Take any greater
15 resources as a road map.

16 MR. BACKENROTH: I understand.

17 Your Honor, I think that, first
18 of all, we have a publicity charged type of
19 case, a case where there is much publicity
20 surrounding it. And, if somebody actually
21 steps up to the plate and is prepared to go
22 forward, I think that will get other people who
23 have been floating around and who have not yet
24 moved, to make firm bids and to step forward.

25 In order to give an incentive for

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 somebody to be, in essence, the stalking horse,
3 they are to know that they there are covered
4 for their legal fees, their expenses of due
5 diligence.

6 They obtained counsel. They have
7 negotiated a contract. They have negotiated
8 with the landlord. There are probably
9 financings, architecture, fees involved,
10 because they intend to do renovations in the
11 place.

12 There is a lot of due diligence
13 and a lot of work that goes into this
14 transaction. And certainly they should be
15 entitled to -- I believe it's a \$50,000 figure,
16 which is a negotiated figure. I don't think it
17 is an extraordinary amount for all of those
18 types of things.

19 THE COURT: 50,000 bucks out of 2
20 million on one and 3 million on the other?

21 MR. BACKENROTH: Yes.

22 No, the other one there is no --
23 excuse me, Your Honor, there is no break-up fee
24 on the other one.

25 THE COURT: No break-up fee to

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 the landlord, to the landlord purchaser, the
3 landlord affiliate purchaser?

4 MR. BACKENROTH: The Limelight
5 has a break-up fee. The Tunnel does not.

6 THE COURT: No break-up fee on
7 The Tunnel?

8 MR. BACKENROTH: Right, The
9 Tunnel is just a straight over the top
10 transaction.

11 THE COURT: The Limelight, which
12 is with the landlord's affiliate, it is \$50,000
13 out of an aggregate consideration, which a
14 competing bidder would have to put up 3 million
15 to also cover cure costs.

16 MR. BACKENROTH: In essence, what
17 he would have to do is step forward and pay \$1
18 million 8 or negotiate a separate deal with the
19 landlord if he wants to do that.

20 So, basically, it is \$3 million.
21 If you want to look at the million 8 plus
22 million 2 on the Limelight, it is approximately
23 3 million on the Limelight and a \$50,000
24 break-up fee and \$100,000 topping fee. I don't
25 think that is an extraordinary break-up fee or

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 topping fee under the circumstances.

3 THE COURT: Mr. Zipes, to what
4 extent do you have a desire to either ask
5 further questions of Mr. Backenroth or to
6 cross-examine?

7 MR. ZIPES: Your Honor, I
8 actually think it might be appropriate to hear
9 what other parties have to say, reserving my
10 rights. Because I don't think that this Debtor
11 has addressed Lionel, the Lionel factors which
12 are laid out in the objection.

13 THE COURT: I think he did. I
14 think he either used the words, or in
15 substance, wasting asset, which is what I
16 needed to hear to satisfy Lionel concerns.
17 And, I must say that of your various concerns,
18 I was more impressed by the other ones than the
19 Lionel issues because I am concerned about this
20 being a wasting asset.

21 Mr. Mann has not spoken, nor has
22 he needed to speak, but I do not expect
23 indefinite patience from the SLA. I do not
24 expect indefinite patience from the landlords,
25 especially Mr. Campo.

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2 And, the point you had made with
3 respect to an exit strategy, the question that
4 needs to be out there, I agree that it's a
5 question that needs to be out there, but I'm
6 not sure if there is an answer that is out
7 there as easily, as an attempt to answer.

8 And, what concerns me is that
9 while I would grant that the IRS doesn't
10 engender as much sympathy as a creditor, as a
11 general unsecured mom and pop vendor, they are
12 still a creditor, and the amount that is
13 available, even for priority creditors,
14 decreases with time if we cannot convert
15 whatever going concern value there is in this
16 estate, into money for whoever the creditors
17 are. And, I am constrained to agree with Mr.
18 Backenroth, that nobody in this room has the
19 power to trump the priorities imposed under the
20 Code.

21 MR. ZIPES: Your Honor, I agree
22 that at this early stage it is somewhat
23 difficult to predict how this case will pan
24 out.

25 Normally, a Debtor will, for

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 example, represent that there is some
3 possibility of a distribution to unsecured
4 creditors, and, therefore, there is a
5 possibility of a plan. That is a factor of
6 Lionel, in addition to wasting assets, which I
7 agree is a factor as well. And, I didn't hear
8 that. And, then, perhaps that representation,
9 I didn't hear how this gets to some sort of a
10 plan or --

11 THE COURT: I am not sure if
12 anybody could truthfully represent that to me.
13 But, alternatively, it seems to me we would
14 have two other suggestions, neither of which is
15 foreign to your office, convert or dismiss. If
16 we convert, the money is going to go to the
17 same people that it's going to go to now,
18 except that we are going to have to figure out
19 how we are going to fairly compensate a Chapter
20 7 Trustee and/or decrease the amount
21 distributable to creditors after the Chapter 7
22 Trustee gets paid. And, if we dismiss it, the
23 lien creditors will get their money.

24 So, where as here, I think the
25 Debtor is trying in good faith to maximize

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 value, I am skeptical as to how much more we
3 can expect of them, but I don't want to cut you
4 off, and I think your idea of whatever, to hear
5 from other creditors or other parties in
6 interest is a constructive one.

7 Would you like to yield for
8 others to be heard then, Mr. Zipes?

9 MR. ZIPES: Yes, that is fine. I
10 had some -- I have some other concerns. I will
11 hold off on them.

12 THE COURT: Well, whenever. If
13 you want to wait.

14 All right, does anybody else want
15 to be heard? Mr. Campo?

16 MR. CAMPO: Thank you, Your
17 Honor.

18 Your Honor, let me first start
19 out by saying that I would assume that the
20 offer or the proffer, rather, by Mr. Backenroth
21 and the offer to Mr. Zipes to ask questions
22 would pertain to other parties here as well?

23 THE COURT: Of course, thank you.

24 MR. CAMPO: Your Honor, let me
25 start out by saying that at the outset, it

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 isn't Waterfront's desire to stand in the way
3 of a prompt sale of these assets.

4 And, in fact, Waterfront believes
5 that the Debtor is coming into bankruptcy.
6 They have moved forward. They have asked for
7 an expeditious hearing in connection with a
8 sale of these assets.

9 Waterfront supports that to the
10 extent that there is a real buyer out there who
11 will pay real value for the assets of The
12 Tunnel.

13 The questions or the concerns
14 that Waterfront has, Your Honor, really relate
15 to the history of the relationship. Not that
16 we are going to revisit history, Your Honor.
17 But, the fact of the matter is that this Debtor
18 has, in the past, used various Courts to delay
19 in paying the ultimate obligations that it has
20 to the landlord under this lease. And, that is
21 why we are standing here with a claim in excess
22 of \$1.3 million of just rent and --

23 THE COURT: Prepetition.

24 MR. CAMPO: Prepetition plus
25 attorneys' fees. And, Your Honor, we are

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 standing here today with over \$105,000 owed
3 postpetition. And, we, frankly, can't
4 understand how it is that Mr. Gatin can come --
5 and I say Mr. Gatin, and I don't mean to refer
6 to Mr. Gatin as the Debtor. But, as the
7 operator, the owner, operator of The Tunnel,
8 can come before another tribunal and say to the
9 landlord, "Wait, you are not getting paid." We
10 have been hearing that for a long period of
11 time. And, we think that it's not fair to run
12 over this landlord's rights and to create a
13 scenario where this landlord is being forced to
14 be a lender to this Debtor in Possession.
15 Particularly, we have very serious concerns as
16 to whether there will be any assumption and
17 assignment of The Tunnel.

18 Let me point out something to
19 you, Your Honor, Mr. Victor is here on behalf
20 of the purchaser of the Limelight.

21 I do not see Mr. Wolf or a
22 representative from Mr. Wolf here as the
23 purchaser of The Tunnel.

24 This agreement was executed six
25 months ago. My client was told the day before

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 the bankruptcy was filed by Mr. Gatin that the
3 Wolf deal was, quote, dead, and that they were
4 going to bring another purchaser to the table.

5 We told them, show us the
6 purchaser, tell us what you have, put a
7 proposal before us. We would be more than
8 willing to listen.

9 It never happened, Your Honor.

10 The Wolf deal is a mix. There is
11 no indication that this deal is real, and we
12 really question whether or not this Debtor can
13 go forward and sell it. Not that we don't want
14 the Debtor to sell it.

15 THE COURT: I am sure you would
16 like nothing better, especially if you are only
17 on the hook for two years and getting 1.3 in
18 prepetition rent paid as part of the cure.

19 MR. CAMPO: Absolutely, but the
20 problem is there just doesn't seem to be any
21 real feasibility to this proposal.

22 Let me point out to you that
23 there are 22 months left in this lease, which
24 Your Honor noted, and we are not extending it.

25 It is our understanding, and Mr.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 Mann can speak to this issue, that the SLA will
3 not issue a liquor license to a purchaser
4 unless there is at least two years left on a
5 lease.

6 So, we question, now, when Mr.
7 Backenroth stands up and says this deal is
8 subject to SLA approval, whether or not you can
9 ever obtain that SLA approval.

10 Your Honor, we have raised in our
11 objection various issues that need to be
12 addressed in connection with any assumption and
13 assignment. Not only the monetary arrearages
14 need to be cured, but there are serious
15 non-monetary defaults.

16 The insurance, Your Honor, we
17 have been asking for the insurance proof for
18 months. We have never gotten it.

19 Since the filing --

20 THE COURT: Excuse me, Mr. Campo,
21 we are talking about liability insurance,
22 casualty insurance or both?

23 MR. CAMPO: We are talking about
24 both, Your Honor, liability insurance, casualty
25 insurance and dry max(sic.) insurance.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 THE COURT: Dry max being a
3 special kind of liability when you sell liquor?

4 MR. CAMPO: When people consume
5 alcohol on your premises.

6 Notwithstanding the fact that we
7 requested it, no proof has been forthcoming.

8 Since the filing of the petition, we requested
9 it and no proof has been forthcoming.

10 The U.S. Trustee has raised the
11 issue here for the first time, Your Honor, but
12 we join in raising that issue because we have
13 no indication that there is any insurance with
14 respect to this operation.

15 With respect to Mr. Backenroth's
16 statement that The Tunnel is operated only once
17 a week, The Tunnel only operated once a week
18 historically. The Tunnel is only open on
19 weekends. It doesn't operate during the week
20 except for some unique special events like the
21 4th of July in which they opened up on the eve
22 of the 4th, on the evening of July 3rd and
23 closed on the morning of July 5th. And, during
24 that time, thousands of patrons went into The
25 Tunnel.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 Now, we can't speculate as to how
3 much they generated in revenues that date, but
4 we understand that they charge, just a cover
5 charge of somewhere between 20 to \$40 per
6 person.

7 On the assumption that 5 or 6 or
8 7,000 people went through the Tunnel during
9 that period, and it is not an outrageous
10 assumption because they had to have police
11 barricades outside in order to control the
12 crowds. And, that is what The Tunnel -- The
13 Tunnel is one of the largest, if not the
14 largest nightclub in all of New York City.
15 And, they get, as a matter of course, in big
16 weekends, thousands of people, through The
17 Tunnel, and with paying cover, consuming
18 alcohol, we find it mind-boggling that there is
19 only \$20,000 in the estate and that we can't
20 get paid our rent.

21 Your Honor, as I mentioned, there
22 are some very serious issues that we raised
23 with respect to the Wolf agreement. The SLA
24 needs to approve the transaction. The fact
25 that there is less than two years on the lease,

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 and, therefore, unless the SLA is going to
3 stand up and represent that they are going to
4 waive their own requirements, we don't
5 understand how any purchaser is going to get
6 that SLA approval.

7 There are provisions in that
8 agreement which provide that escrow agents are
9 going to hold money in non-interest bearing
10 accounts. That attorneys' fees are going to be
11 paid at the closing, before any Court approves
12 it.

13 Now, granted, we understand that
14 this agreement was executed, but there is no
15 indication that this purchaser or any other
16 purchaser was moving forward on terms that are
17 consistent with Section 363 and the other
18 provisions of the Bankruptcy Code, as well as
19 Section 365.

20 Your Honor, the Wolf agreement
21 has a provision that says that Wolf won't
22 accept amendments, certain amendments to the
23 lease.

24 Now, the lease as defined and as
25 constituted is the lease as amended from time

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 to time. Pursuant to certain of those
3 amendments, the Debtor asked the landlord, my
4 client, for additional space. My client was
5 reluctant to give them additional space, but
6 gave it to them with a specific contractual
7 right to take the space back, if the landlord
8 needed the space.

9 The landlord has executed its
10 take-back rights with respect to two amendments
11 that the landlord granted to the Debtor during
12 a term of the amendments to the lease; one, a
13 December 1992 amendment, in which they were
14 granted additional space, another, in October
15 of 1995.

16 THE COURT: Those being the
17 take-backs or the amendments that gave your
18 client the right to take back?

19 MR. CAMPO: The attempts were to
20 give, the attempts specifically gave the
21 additional space, but reserved the --

22 THE COURT: The take-back rights.

23 MR. CAMPO: It had take-back
24 rights within. They were negotiated with the
25 Debtor.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 THE COURT: And, you are saying
3 that it's your understanding that Wolf says
4 that he is not going to abide by those
5 amendments?

6 MR. CAMPO: If you look at the
7 agreement, Your Honor, if you look at Section
8 9.5 of the Wolf agreement, this was page 13 of
9 the agreement, it states "national buyer,"
10 after it states that the buyer shall have
11 obtained consent of the landlord to the
12 assignment, et cetera, and the landlord shall
13 acknowledge that the lease is in full force and
14 effect.

15 The next sentence says, "Any
16 amendment to the lease decreasing the tenant
17 space, and/or increasing the rent is the result
18 of the transfer, shall be null and void unless
19 agreed to by the buyer."

20 THE COURT: I will invite Mr.
21 Backenroth to respond. I will have to assume
22 this is an amendment entered into after the
23 date of this contract and before the date of
24 the closing. I would also assume the buyer has
25 to take the lease as it exists, essentially,

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 from the context of the bankruptcy case.

3 MR. CAMPO: We would assume that,
4 Your Honor, although, frankly, the agreement
5 does not state that.

6 Your Honor, as we have indicated
7 to you before, we want all prospective
8 purchasers. And, we invite the Debtor to come
9 to us with bidders. And, we have from time to
10 time, and we continue to.

11 But, we want all bidders to
12 understand what it is that they are getting
13 with respect to this lease, what it is that
14 their obligations are with respect to the
15 lease, particularly as it provides for
16 assurances.

17 There are provisions under the
18 lease in which the tenant under the lease must
19 indemnify the landlord for claims. And, the
20 reason for that, Your Honor, was very specific.
21 At the time that the lease was negotiated, we
22 knew that the Tunnel was going to be used as a
23 nightclub.

24 THE COURT: Your client doesn't
25 want to be on the hook for bad things that

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 happen and for which your client could get
3 snared into, so to speak?

4 MR. CAMPO: Your Honor, as a
5 point of fact, during a period of time,
6 prepetition, the tenant allowed the insurance
7 to lapse.

8 During that period of time, some
9 very severe incidents, accidents occurred.
10 There was a death at The Tunnel, a patron died.
11 There were shootings. My client is now in the
12 middle of potential claims against them for the
13 personal injury of patrons at The Tunnel simply
14 because the tenant has failed to procure the
15 necessary insurance. And, right now, we have
16 no idea if there is any insurance.

17 Your Honor, as I said, the lease
18 appears to be -- Mr. Wolf would want to
19 cherry-pick the lease. We are just not going
20 to allow that to happen.

21 THE COURT: I don't think the
22 Bankruptcy Code allows that to happen.

23 MR. CAMPO: We agree.

24 THE COURT: Turn to the payment
25 of your postpetition rent, Mr. Campo, and

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 whether, if your other concerns were satisfied,
3 if there could be a means, if, indeed, you are
4 going to get paid, your whole million 3 and the
5 postpetition accrues through the date of
6 closing, whether there is a way to skin the cat
7 in that regard.

8 MR. CAMPO: Before I address
9 that, let me just state that the million 3 is
10 the rent and the late charges. There are
11 attorneys' fees which are quite substantial
12 because there has been a very long history of
13 litigation with Mr. Gatin.

14 THE COURT: Those attorneys' fees
15 being principally in State Court summary
16 proceedings and that kind of stuff?

17 MR. CAMPO: Absolutely, Your
18 Honor. But, they are not insufficient. The
19 attorney fees didn't accrue. They are merely a
20 half a million dollars.

21 We understand that that would be
22 subject to a determination of reasonableness.
23 But, it is not just the million 3. It's a
24 million 3, plus the attorneys' fees or some
25 portion of it that would have to be determined

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 by this Court as being reasonable, as part of
3 the cure.

4 As to the postpetition rent, Your
5 Honor, frankly, and, this is why I asked the
6 question, I would invite Mr. Gatin to come and
7 tell us where the money is. I would like to
8 ask Mr. Gatin where the money is, Your Honor,
9 because I don't understand. Because it seems
10 to me that from the cover alone, from their
11 July 4th party, they would have generated
12 hundreds of thousands of dollars of revenue
13 without the liquor. We would like to know
14 where is this money. I don't hear anything
15 here.

16 Your Honor, I know this is a very
17 early stage of this case. There hasn't been a
18 341(a) meeting, despite the fact that we have
19 indicated the willingness to serve on the
20 Creditors Committee. There apparently aren't
21 enough other interested creditors for the U.S.
22 Trustee to appoint one.

23 I know Your Honor can schedule a
24 status conference. I would like to have Mr.
25 Gatin down here and I would like to ask him

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 where is the money.

3 I would like to see Mr. Wolf and
4 I would like him to tell the Court that he is
5 moving forward with this agreement, with all of
6 the necessary modifications that would have to
7 be taken into effect, given the fact that this
8 agreement is now an agreement that the Debtor
9 is going to propose be approved as part of this
10 Debtors' bankruptcy, understanding that a lot
11 of the provisions in here won't be able to be
12 part of an agreement that is in a bankruptcy
13 proceeding. And, I would like to know where
14 Mr. Wolf is.

15 I suspect, Your Honor, Mr. Wolf
16 is not here because Mr. Wolf does not exist
17 anymore. I see the purchaser for the Limelight
18 here, and they are asking for the appropriate
19 things that a purchaser would ask for, i.e.,
20 give me some bid protection. I don't see Mr.
21 Wolf asking for it because I don't think he
22 exists.

23 Your Honor, irrespective of that,
24 on the assumption that we could get the
25 appropriate assurances that we would get

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 completely cured, monetary and non-monetary
3 defaults, and we can get our postpetition rent
4 as it comes due, we will not stand in the way
5 of this Debtor attempting to assume and assign
6 this lease.

7 But, at this given moment, we
8 have no assurances that any of that is going to
9 take place. And, frankly, we don't even know
10 whether or not this deal is even a real deal to
11 go forward.

12 As I said, there is an escrow
13 agent here, under this agreement, it's Stroock,
14 Stroock & Lavan. They are not here. They are
15 or they, at least prepetition, were corporate
16 counsel to H.C. Entertainment.

17 I don't know what is happening
18 with Stroock in connection with this case. I
19 don't -- at one point, I was under the
20 impression they were going to be retained. I
21 understand they are not. I understand there
22 may be some conflict questions. That is why
23 they are not being retained.

24 But, at this point, Your Honor,
25 we have no comfort that the Wolf deal is a real

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 deal. And, we have no comfort that Wolf or any
3 other purchaser, as it was willing to abide the
4 terms of the lease, and, in particular, Your
5 Honor, if you would read our objection
6 paragraph, the last paragraph, we set forth
7 specifically the types of things that have to
8 be cured in connection with an assumption and
9 assignment of the lease.

10 As to the issue of postpetition
11 rent, Your Honor, we absolutely would request
12 that the Debtor come down and explain to us, if
13 we are going to be told that we are not going
14 to get the rent, we want to hear why we are not
15 getting the rent. We have not heard anything
16 that is satisfactory to us other than to tell
17 us that the Debtor just can't do it because it
18 has limited operations. This is the Debtors'
19 historic operations. They don't operate the
20 nightclub during the week, except when they
21 have special events, holidays and things of
22 that sort, and, for example, during Christmas
23 vacation and things of that sort, when they
24 can, when there are a lot of potential patrons
25 around who are home from school break and

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 stuff. But, otherwise, this nightclub
3 operation is on the weekend, and that is it.

4 So, they say that they are
5 running limited, because they are only
6 operating once a week, that is not quite
7 accurate because they only operate once a week.
8 We would like to hear where the money is.

9 THE COURT: Mr. Backenroth, I
10 think you need to respond.

11 MR. BACKENROTH: Yes, first of
12 all, when I said that they are operating
13 limited, they are operating limited.

14 THE COURT: That is the least of
15 the things that Mr. Campo mentioned that you
16 have to respond to.

17 MR. BACKENROTH: Well, I can take
18 it from the top. As far as we know, the deal
19 is real. We are asking for a quick sale date.
20 They have the right, by the way, to get a
21 temporary license. And, even though there is
22 not two years left on the lease, they can do
23 that.

24 That deal is subject to a
25 temporary license, not to a permanent one. So,

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 the proof in the pudding is will they or will
3 they not close. And, if Your Honor schedules a
4 sale on two or three weeks' notice, if they
5 don't close, that is the end of it. If they do
6 close, then they have gotten a considerable
7 amount of money that they otherwise would not
8 get.

9 Talking about the right to take
10 back the property in the event of a transfer, I
11 think is unenforcible under the Bankruptcy
12 Code.

13 If it's triggered by the
14 assignment, all that says is that the landlord
15 can take back space merely because of the
16 assumption and assignment of the lease. That
17 would not be enforcible.

18 THE COURT: I don't think that is
19 really what we are talking about. Do you
20 understand, or I guess, more importantly, does
21 Mr. Wolf understand that when I approve an
22 assignment, an assumption and assignment of a
23 lease, it is the lease as amended, the lease as
24 it exists.

25 MR. BACKENROTH: It is as is.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 The contract does not say anything different.

3 THE COURT: How do you read the
4 language that Mr. Campo quoted?

5 MR. BACKENROTH: What Mr. Campo
6 quoted was that in the event there is a
7 take-back of the premises because of the
8 assignment, then that would terminate the
9 agreement. But, a take-back of property
10 because of an assignment is enforced -- could
11 not be enforced under the provisions of the
12 Bankruptcy Code because it is an
13 anti-assignment type of provision. That is all
14 that that says.

15 It says if I lose space because
16 of the assignment, then that would terminate
17 the agreement.

18 THE COURT: Mr. Backenroth, I am
19 trying to meet you halfway on this, at least
20 understanding your needs and concerns. But, I
21 have trouble seeing how you can say that a
22 contract was entered into months before the
23 filing of the bankruptcy case, that had a
24 provision in it that was intended to deal with
25 a 365(f) situation.

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 MR. BACKENROTH: It just simply
3 says, and I didn't draft the contract, but what
4 the contract -- what I heard was a clause that
5 says that if, on the assignment of the lease,
6 there is a take-back of space, and that would
7 be a condition that would terminate the
8 contract.

9 THE COURT: I tried to keep up
10 with Mr. Campo. I don't want to beat a dead
11 horse. But, I tried to keep up with Mr. Campo
12 when he was reading that to me by reading that
13 myself. And, I think at best the language is
14 ambiguous. But, I cannot for the life of me
15 understand how it can have the attributes you
16 attribute to it.

17 MR. BACKENROTH: "Any amendments
18 at least decreasing the tenant space and/or
19 increasing the rent as a result of the
20 transfer, shall be null and void unless --"

21 THE COURT: Oh, wait a second, as
22 a result of the transfer?

23 MR. BACKENROTH: That is what it
24 says.

25 THE COURT: Okay, I owe you an

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 apology.

3 MR. BACKENROTH: Page 13, so -- I
4 am sorry. So, the way I read it is that if the
5 result, if there is a decrease as a result of
6 the transfer, that is a type of clause that you
7 see in some of the form leases, and perhaps
8 negotiated leases, that say that if I assign it
9 to someone else, the landlord can take back the
10 space at a certain amount --

11 THE COURT: Please accept my
12 apologies, Mr. Backenroth. I see where you are
13 coming from and I don't have a problem with
14 what you're telling me.

15 MR. BACKENROTH: That is all it
16 does say. That doesn't mean that at the end of
17 the day, if the landlord throws up enough
18 smoke, that he may cause Mr. Wolf to back out.
19 I think that we indicated in our papers or
20 perhaps not, that there was a serious claim
21 lodged against the landlord for tortious
22 interference.

23 And much of the litigation and
24 legal fees that they are talking about is not
25 landlord/tenant type of, "I didn't pay the

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 rent," an eviction. It is proceedings in which
3 we asked for permission from the landlord to
4 assign it over on a \$5 million deal that would
5 have paid everybody off, including whatever it
6 is that they would have been owed, and the
7 Limelight landlord because it was a joint deal.
8 And, we believe that they scootched that deal.
9 And, they inhibited that deal, and they
10 tortiously interfered. That was the cause of
11 much litigation in State Court.

12 This clause is simply a clause
13 that, as I said, a normal type of provision
14 that many landlords put in because they think
15 they can grab back space because of an
16 assignment. I filed Chapter 11 solely to get
17 around provisions of this nature, although I
18 must submit that was not the reason for the
19 filing of this petition.

20 So, that clause will not fly, if
21 they are looking to inhibit the sale based upon
22 that, Your Honor.

23 THE COURT: Okay.

24 MR. BACKENROTH: Basically, as I
25 said, what is the downside? Your Honor will

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 schedule a sale, for argument's sake, with
3 three-weeks' notice. Either we are going to be
4 able to do that, or they will have returnable a
5 notice to terminate the lease. That is all
6 that is going to happen.

7 So, against the prospects of
8 getting \$1 million 3, plus their postpetition,
9 I don't think they are in a worse position
10 unless their objective is not as they say, so
11 we are in favor of the sale, if there is a real
12 sale.

13 Do they have good reasons to take
14 back the premises? Perhaps they think they can
15 do better on what is probably a below market
16 rent leaseholders arrangement.

17 They want to point out things to
18 any prospective purchaser to try and spook the
19 sale? I don't know if they will do that or not
20 do that. But, the contract is there, and the
21 lease is there, whoever wants to make a bid on
22 it.

23 Either they will close based on
24 the assumption and assignment, or they won't
25 close. And, that will be determined very

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT
2 quickly. And the, proof of the pudding is, is
3 there going to be a sale, is there not going to
4 be a sale, will Mr. Wolf go forward or not?

5 They put down a deposit. That
6 deposit was released as part of an
7 understanding between the parties. They do
8 have \$100,000 down. My client tells me they
9 are still prepared to go forward. And,
10 therefore, I am asking the Court to schedule a
11 hearing.

12 Three weeks from now, if it turns
13 out that they are not going forward, nobody
14 else comes forward, nobody else is prepared to
15 do it, they will get back their premises. So,
16 what is the downside really at this point when
17 you weigh the various alternatives before the
18 Court?

19 The prospect of the estate being
20 enhanced by what we believe is \$700,000, and
21 the downside for the rent attributable to three
22 weeks or whatever it is Your Honor thinks is an
23 appropriate notice, that may be their downside.
24 Well, their upside is \$1 million 3 plus, at
25 least, what they claim is legal fees. We,

1 H.C. ENTERTAINMENT/LANSDOWN ENTERTAINMENT

2 obviously, don't agree with that.

3 I have been informed that our
4 legal fees on the other side of this
5 transaction were about \$60,000.

6 So, when somebody tells me half a
7 million dollars when we spent \$60,000, I
8 suspect that --

9 THE COURT: Does that also
10 include legal fees associated with the tortious
11 interference claim?

12 MR. BACKENROTH: I am not one
13 hundred percent sure. I won't represent that
14 to the Court. But, my understanding is the
15 fees were \$60,000. It is possible that the
16 fees concerning tortious interference may have
17 been in addition to that. That is possible,
18 but I don't think that is compensable under the
19 lease as well. The landlord/tenant issue,
20 nonpayment of rent, perhaps. And, if there is
21 a good reason for nonpayment of rent because
22 they frustrated our ability to sell and pay
23 them, that may be a defense to our legal fees
24 as well.

25